

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

ORDER

Adopted: October 18, 2004

Released: October 18, 2004

By the Deputy Chief, Wireline Competition Bureau:

1. On August 20, 2004, the Commission issued an Order and Notice of Proposed Rulemaking¹ seeking comment on how to implement the obligations of section 251(c)(3) of the Communications Act of 1934, as amended,² in a manner consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United States Telecom Ass'n v. FCC*.³ The Commission's *Interim Order and NPRM* stated that interested parties could file comments within 21 days of the publication of a summary of the *Interim Order and NPRM* in the Federal Register, and could file reply comments within 36 days of such publication. A summary of the *Interim Order and NPRM* was published in the Federal Register on September 13, 2004. Thus, comments filed in response to the *Interim Order and NPRM* were due by October 4, 2004, and reply comments are due by October 19, 2004.⁴

2. On October 14, 2004, the National Association of State Utility Consumer Advocates and the Office of the Ohio Consumers' Council (jointly, NASUCA) filed a petition asking the Commission to extend the deadline for filing reply comments in this proceeding to November 2, 2004.⁵ NASUCA argues

¹ See *Unbundled Access to Network Elements*, CC Docket No. 01-338, WC Docket No. 04-313, Order and Notice of Proposed Rulemaking (rel. Aug. 20, 2004) (*Interim Order and NPRM*).

² 47 U.S.C. § 251(c)(3).

³ 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), *pets. for cert. filed*, Nos. 04-12, 04-15, 04-18 (June 30, 2004). See also *United States Telecom Ass'n v. FCC*, No. 00-1012, Order, (D.C. Cir. Apr. 13, 2004) (granting a stay of the court's mandate through June 15, 2004) (*USTA II Stay Order*). The *USTA II* mandate issued on June 16, 2004.

⁴ Pleading Cycle Established For Comments Regarding Final Unbundling Rules, CC Docket No. 01-338, WC Docket No. 04-313, Public Notice, DA 04-2967 (WCB Sept. 13, 2003).

⁵ *Unbundled Access to Network Elements*, Motion to Extend Time in Which to File Reply Comments, CC Docket No. 01-338, WC Docket No. 04-313 (filed Oct. 14, 2004).

that the Commission should grant all parties an extension of time for filing reply comments because not all of the comments filed in this proceeding were, in its view, timely made available online via the Commission's Electronic Comment Filing System (ECFS). NASUCA claims that as a result it only recently learned that a significant number of parties – including major stakeholders such as Verizon and SBC – filed comments in response to the *Interim Order and NPRM*. NASUCA maintains that its late discovery of these filings, as well as the complexity, scale and scope of the present proceeding and the length of the comments filed by various parties, justify an extension in this case.

3. The Bureau hereby denies NASUCA's request for extension of time to file reply comments. It is the policy of the Commission that extensions of time are not routinely granted.⁶ In light of the unique circumstances surrounding this matter, we find a departure from this policy is not appropriate here. Specifically, as the Commission emphasized in the *Interim Order and NPRM*, certainty regarding the rules called into question by the *USTA II* decision is essential to the health of the domestic telecommunications market. While the Commission has acted to provide short-term clarity and stability, its interim requirements will expire on March 13, 2005 in the absence of permanent replacement rules. The Commission has expressed its intention to adopt final rules by the end of this year.⁷ Moreover, we also note that several parties have challenged the Commission's interim requirements before the D.C. Circuit, which has directed parties to file motions regarding the status of the proceeding by January 4, 2005.⁸ Accordingly, given the importance of adopting final rules as quickly as possible, the Bureau cannot countenance the delay that would attend any extension of the reply comment filing deadline.

4. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and sections 0.91, 0.291, 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.46, the request for extension of time filed by NASUCA IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Deputy Chief, Wireline Competition Bureau

⁶ 47 C.F.R. § 1.46(a).

⁷ *Interim Order and NPRM* at para. 20. *See also id.*, Separate Statement of Chairman Michael K. Powell (“I have committed to push the Commission to complete this proceeding in six months, before the freeze expires. As a sign of that commitment, I have already scheduled the decision for a vote at our December 2004 open meeting. I insist the parties and urge my colleagues to move heaven and earth to ensure we meet this objective. Consumers demand it and competitors and incumbents alike need it.”).

⁸ *USTA v. FCC*, D.C. Cir. No. 00-1012 (order issued Oct. 6, 2004).